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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 CARLOS AGUSTIN GOROSAVE,
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12 Petitioner,
13 v.
14 UNITED STATES OF AMERICA,
15 Respondent.
16

Criminal Case No. 08-cr-4429 DMS
Civil Case No. 16-cv-1511 DMS

**ORDER DENYING MOTION
FOR CERTIFICATE OF
APPEALABILITY**

17 On June 17, 2016, Petitioner Carlos Agustin Gorosave filed a Motion to
18 Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255, challenging his
19 sentence in light of the recent Supreme Court decision in *Johnson v. United States*,
20 135 S. Ct. 2551 (2015). On March 1, 2017, this Court issued an order denying
21 Petitioner's motion. The Court held bank robbery under 18 U.S.C. § 2113(a)
22 remains a crime of violence under U.S.S.G. § 4B1.2(a)(1). On March 3, 2017,
23 Petitioner filed a Motion for Certificate of Appealability, contending "reasonable
24 jurists" could find the question of whether bank robbery remains a crime of violence.

25 A certificate of appealability is authorized "if the applicant has made a
26 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).
27 "A petitioner satisfies this standard by demonstrating that jurists of reason could
28 disagree with the district court's resolution of his constitutional claims or that jurists

1 could conclude the issues presented are adequate to deserve encouragement to
2 proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Slack v.*
3 *McDaniel*, 529 U.S. 473, 484 (2000).

4 Petitioner has not demonstrated that reasonable jurists could find debatable
5 this Court’s denial of Petitioner’s motion. On March 6, 2017, the United States
6 Supreme Court issued a decision in *Beckles v. United States*, No. 15-8544, 2017 WL
7 855781, at *9 (U.S. Mar. 6, 2017), holding “that the advisory Sentencing Guidelines
8 are not subject to a vagueness challenge under the Due Process Clause and that §
9 4B1.2(a)’s residual clause is not void for vagueness.” Therefore, *Johnson* does not
10 apply to the Career Offender Guidelines, and bank robbery under § 2113(a) remains
11 a crime of violence under § 4B1.2. Accordingly, Petitioner’s motion for a certificate
12 of appealability is denied.

13 **IT IS SO ORDERED.**

14 Dated: March 7, 2017



Hon. Dana M. Sabraw
United States District Judge